

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

TENA MARIE MESSER,

Plaintiff,

Case No. 15-cv-13470

v

Honorable Thomas L. Ludington  
Magistrate Judge Patricia T. Morris

OCWEN LOAN SERVICING, LLC,

Defendant.

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**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING  
DEFENDANT'S MOTION TO DISMISS, AND DISMISSING PLAINTIFF'S  
COMPLAINT**

Plaintiff Tena Marie Messer filed her complaint against Defendant Ocwen Loan Servicing, LLC ("Ocwen") on June 5, 2015 in Presque Isle County Circuit Court in the State of Michigan. Compl., ECF No. 1. Ex. 2. Plaintiff alleges counts of breach of contract, misrepresentation, and wrongful foreclosure related to a foreclosure proceeding initiated by Defendant Ocwen after Plaintiff defaulted on her mortgage payments. *Id.* Plaintiff also sought an order enjoining the foreclosure sale. *Id.* On October 1, 2015 Defendant Ocwen removed the action to this Court asserting diversity jurisdiction. *See* ECF No. 1. Defendant then filed a motion to dismiss Plaintiff's complaint on December 7, 2015. *See* Mot. to Dismiss, ECF No. 7.

On June 13, 2016, Magistrate Judge Patricia T. Morris issued a report recommending that Defendants' motion to dismiss be granted and Plaintiff's complaint be dismissed with prejudice. *See* Rep. & Rec., ECF No. 17. The magistrate judge reasoned that Plaintiff had not identified any fraud or defect in the foreclosure proceedings. *Id.* She also found that Plaintiff's breach of contract and fraud claims were essentially collateral attacks on the foreclosure sale, and that they

did not satisfy the pleading standards of Federal Rules of Civil Procedure 8 or 9(b). The magistrate judge consequently found Plaintiff's claims subject to dismissal under Rule 12(b)(6), and Plaintiff's request for injunctive relief to be moot.

Although the magistrate judge's report explicitly states that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 17, is **ADOPTED**.

It is further **ORDERED** that Defendants' motion to dismiss, ECF No. 7, is **GRANTED**.

It is further **ORDERED** that Plaintiff Messer's complaint, ECF No. 1 Ex. 2, is **DISMISSED with prejudice**.

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

Dated: July 11, 2016

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 11, 2016.

s/Michael A. Sian  
MICHAEL A. SIAN, Case Manager